

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Eagle West Communications, Inc.
Operator of Cable Television System
Community Unit ID: AZ0342
Physical System ID: 002292
Mesa, Arizona

File Number: EB-06-SD-177

NAL/Acct. No.: 200732940001

FRN: 0004979126

MEMORANDUM OPINION AND ORDER

Adopted: May 29, 2008**Released:** June 2, 2008

By the Associate Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),¹ and Section 1.106 of the Commission’s rules,² we dismiss as untimely a Petition for Reconsideration (“*Petition*”) filed on March 11, 2008, by Eagle West Communications, Inc. (“Eagle West”), owner of a cable system in Mesa, Arizona. Eagle West seeks reconsideration of a *Memorandum Opinion and Order*,³ issued by the Enforcement Bureau, which upheld an eight thousand dollar (\$8,000) monetary forfeiture penalty against Eagle West for willful and repeated violation of Section 11.35 of the Commission’s Rules (“Rules”).⁴ As discussed below, we dismiss Eagle West’s *Petition* because it does not comply with the Act and the Rules, and is therefore procedurally defective. We also find that even if Eagle West had timely filed its *Petition*, the *Petition* would fail on the merits.

II. BACKGROUND

2. On May 16, 2005, an agent of the Enforcement Bureau’s San Diego Office attempted to inspect the operational readiness of the EAS equipment installed at Eagle West’s cable television system serving Mesa, Arizona. During this inspection, the San Diego agent found that the system’s EAS equipment, including both the encoder and the decoder, had been purchased and was delivered to the cable system’s head-end, but was never installed. The agent orally warned the cable system’s Senior Technician that the EAS equipment must be installed and made operational as soon as possible.

3. On June 5, 2006, the San Diego agent returned to the Eagle West cable system serving Mesa, Arizona, and attempted to inspect the operational readiness of the EAS equipment. The agent spoke with a manager from Eagle West who acknowledged to the agent that Eagle West had still not installed or made operational the EAS equipment at its Mesa, Arizona, system. Upon returning to the San Diego

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ *Eagle West Communications, Inc.*, 22 FCC Rcd 21425 (EB 2007) (“2007 Memorandum Opinion and Order”).

⁴ 47 C.F.R. § 11.35. See *Eagle West Communications, Inc.*, 22 FCC Rcd 2085 (EB 2007) (“Forfeiture Order”).

Office, the agent reviewed the Commission's records and determined that several smaller cable systems in Arizona owned by Eagle West were granted temporary waivers of EAS requirements.⁵ However, there is no record that a waiver was requested or granted for the Eagle West cable system serving Mesa, Arizona.

4. On November 8, 2006, the San Diego Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$8,000 to Eagle West, finding Eagle West apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to install and make operational EAS equipment in its cable system serving Mesa, Arizona.⁶ Despite repeated contacts by the San Diego Office, Eagle West failed to file a response to the NAL. Consequently, on February 2, 2007, the Region released the *Forfeiture Order*, and imposed an \$8,000 forfeiture on Eagle West for its willful and repeated violation of Section 11.35 of the Rules. Eagle West filed a petition for reconsideration of the *Forfeiture Order*, arguing that the forfeiture be set aside because Eagle West had taken action to install the EAS equipment at issue and ensure its operation.⁷ In the *2007 Memorandum Opinion and Order*, the Enforcement Bureau rejected that argument, finding that the San Diego agent had met with managers and technicians at the Eagle West Mesa, Arizona, cable system during the 2005 and 2006 inspections, and during both inspections was not able to inspect the EAS equipment for the Eagle West Mesa, Arizona, cable system because he was told that it was not installed. The Bureau determined that "[t]o the extent Eagle West installed and ensured the operation of the EAS equipment for its Mesa, Arizona, system after the inspections by the San Diego agent, . . . these efforts do not support a reduction in the assessed forfeiture amount . . . [because the] Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture."⁸

III. DISCUSSION

5. Section 405(a) of the Act⁹ and Section 1.106(f) of the Rules¹⁰ provide that a petition for reconsideration be filed within thirty days from the date of public notice of the final action. In this case, public notice of the *2007 Memorandum Opinion and Order* occurred on December 11, 2007, upon its release.¹¹ The thirtieth day after December 11, 2007, was January 10, 2008.¹² Thus to have been timely,

⁵ See *Report and Order, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055, 4083 (2002) (the Commission will continue to grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship); *Request for Waiver of Section 11.11(a) of the Commission's Rules*, 17 FCC Rcd 20108 (EB 2002) (Several Eagle West cable systems granted 36 month EAS waivers in Arizona and New Mexico, until October 2005; no waiver was requested or granted for the Eagle West Mesa, Arizona, system); *Public Notice: EAS Waiver Extensions Granted To Very Small Cable Systems*, 21 FCC Rcd 7129 (EB 2006) (no EAS waivers extensions for any Eagle West cable systems requested or granted).

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732940001 (Enf. Bur., Western Region, San Diego Office, released November 8, 2006).

⁷ The Bureau is also in receipt of a letter, dated May 1, 2008, from Eagle West's counsel stating that to his knowledge, the Bureau had not ruled on the 2007 petition for reconsideration filed by Eagle West. We note the Bureau did rule on that petition in the *2007 Memorandum Opinion and Order*.

⁸ *2007 Memorandum Opinion and Order*, 22 FCC Rcd at 21427. See *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

⁹ 47 U.S.C. § 405(a).

¹⁰ 47 C.F.R. § 1.106(f).

¹¹ See 47 C.F.R. § 1.4(b).

any request for reconsideration was due to be filed with the Commission no later than January 10, 2008.¹³ Eagle West's submission was filed March 11, 2008. Accordingly, we find that Eagle West did not timely file its petition for reconsideration and that dismissal is warranted.¹⁴

6. We further find that even if Eagle West had timely filed its petition, the *Petition* would fail on the merits. Eagle West argues that the San Diego agent never came to the Eagle West corporate office in Mesa, Arizona, and did not meet with the CEO or the president of the company. We find no relevance to these arguments. In both 2005 and 2006, the San Diego agent went to the Eagle West cable system office at 9333 East Main Street, Mesa, Arizona, to conduct an inspection of Eagle West's cable system serving Mesa, Arizona. During both attempted inspections, the agent was informed by technicians and managers employed by Eagle West that the EAS equipment was not installed. While the San Diego agent did visit the Eagle West corporate office in 2005, there was no requirement that he do so, and no requirement that he return to the corporate office in 2006, when he attempted to re-inspect the Eagle West Mesa, Arizona, system office in 2006. To the extent the agent was given the incorrect titles of the managers he interviewed,¹⁵ it does not mitigate Eagle West's failure to install EAS equipment for its Mesa, Arizona, system. Additionally, Eagle West states that it installed the EAS equipment "in June," however, we find that Eagle West's later attempts to install EAS equipment at its Mesa, Arizona, system do not mitigate its failure to ensure the operational readiness of the equipment during the San Diego agent's inspections in 2005 and 2006. Therefore, Eagle West's repeated violations of Section 11.35 of the Rules would not warrant cancellation or reduction of the monetary forfeiture, even if its *Petition* had been timely filed.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), 405 of the Act¹⁶ and Section 1.106 of the Rules,¹⁷ that the *Petition for Reconsideration* filed by Eagle West Communications, Inc. **IS DISMISSED**, and the Bureau's *2007 Memorandum Opinion and Order* **IS AFFIRMED**.

8. Payment of the forfeitures ordered by the Region and the Bureau affirmed by this Memorandum Opinion and Order shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO

¹² See 47 C.F.R. § 1.4(j).

¹³ See 47 C.F.R. §§ 1.106(f), 1.4(j).

¹⁴ See *Washington Broadcast Management Co., Inc.*, 15 FCC Rcd 6607 (2000); *Bay Broadcasting Corporation*, 15 FCC Rcd 23449 (EB 2000).

¹⁵ We decline to name the individuals in this *Order*, as they are not the subject of this sanction. Eagle West may file a request for this information pursuant to Section 0.461 of the Commission's Rules, 47 C.F.R. § 0.461 *et seq.*

¹⁶ 47 U.S.C. §§ 154(i), 154(j), 405.

¹⁷ 47 C.F.R. § 1.106.

¹⁸ 47 U.S.C. § 504(a).

63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Eagle West Communications, Inc., shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

9. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Eagle West Communications, Inc., at its address of record, and to Lewis Goldman, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Associate Chief, Enforcement Bureau